

Objection Date and Time: May 3, 2019 at 11:30 a.m. ET

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

CHAPTER 11

CASE NO. 18-23538-RDD

(Jointly Administered)

**SUPPLEMENTAL OBJECTION AND RESERVATION OF RIGHTS OF WASHINGTON
PRIME GROUP INC. TO THE PROPOSED CURE AMOUNTS IN CONNECTION WITH
THE DEBTORS' PROPOSED ASSUMPTION AND ASSIGNMENT OF CERTAIN LEASES
(DOCKET NO. 3298)**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Washington Prime Group Inc. ("WPG"), as managing agent for the owner of the properties identified herein, by its undersigned counsel, FROST BROWN TODD LLC, hereby submits this supplemental objection and reservation of rights (this "Supplement") to the above-captioned

debtors' (the "Debtors") *Notice of Assumption and Assignment of Additional Designatable Leases* (Docket No. 3298) (the "Supplemental Notice of Assumption and Assignment").¹ In support of this Supplement, WPG respectfully states:

BACKGROUND

1. On October 15, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (this "Court").

2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. WPG is the owner, or the managing agent for the owners of, certain real properties in which the Debtors lease retail space (the "WPG Leased Premises") from WPG pursuant to those certain unexpired leases (collectively, the "WPG Leases" and each a "WPG Lease").² Specifically, the Debtors are currently leasing retail space from WPG at the locations identified on Exhibit A attached hereto and incorporated herein (the "Leased Premises").³

4. The Leased Premises are located in "shopping centers" as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

5. On November 1, 2018, the Debtors filed their *Motion for Approval of Global Bidding*

¹ Capitalized but undefined terms used in this Supplement shall have the meanings ascribed to them in the Supplemental Notice of Assumption and Assignment, the Original Assumption and Assignment Notices, or the Sale Motion, as defined in this Supplement and as applicable.

² See Footnote 3.

Procedures (Docket No. 429) (the “Sale Motion”) seeking, among other things, approval of procedures to market, auction, and sell the Debtors’ real estate and other assets as a going concern, separated into: (i) procedures that apply to certain “go-forward” stores and related assets that the Debtors have deemed profitable; and (ii) global procedures that apply to the Debtors’ remaining assets that are not sold as part of the “go-forward” stores (collectively, the “Sale”).

6. On November 19, 2018, this Court entered its *Order Approving Global Bidding Procedures and Granting Related Relief* (Docket No. 816) (the “Sale Procedures Order”) which, among other things, approved the Sale Motion.

7. Based on information and belief, on January 14, 2019, the Debtors commenced an auction for the sale of the Global Assets (the “Auction”) whereby the Debtors selected an offer by Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc., as the highest and/or best offer for all or substantially all the Global Assets.

8. In connection with the Sale Procedures Order, on January 18, 2019, the Debtors filed the *Notice of Successful Bidder and Sale Hearing* (Docket No. 1730) (the “Notice of Successful Bidder”) stating that the Buyer was the highest and/or best offer for all or substantially all of the Global Assets.

9. On January 18, 2019, the Debtors filed the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (Docket No. 1731) (the “First Notice of Potential Assumption and Assignment”), and on January 23, 2019, the Debtors filed the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global*

³ The WPG Leases on Exhibit A include certain operating agreements and other agreements that WPG has entered into with non-debtor party Seritage SRC Finance LLC, identified as “Seritage SRC Finance LLC-Associated Leases” on Exhibit A, as well as certain operating agreements and other agreements that WPG has entered into with Debtors.

Sale Transaction (Docket No. 1774) (the “Second Notice of Potential Assumption and Assignment” and, together with the First Notice of Potential Assumption and Assignment, the “Original Assumption and Assignment Notices”).

10. The Original Assumption and Assignment Notices identified certain executory contracts and unexpired leases that the Debtors might assume and assign as part of the Sale, including certain of the WPG Leases. The Original Assumption and Assignment Notices proposed \$436,993.11 as the aggregate amount necessary to cure all monetary defaults under certain WPG Leases the Debtors proposed to assume and assign to the Buyer.

11. As provided in the Notice of Successful Bidder and the Original Assumption and Assignment Notices, objections to, among other things, the Sale to the Buyer, proposed cure amounts, and the potential assumption and assignment of leases and contracts were due by January 26, 2019 at 4:00 p.m. (Eastern).

12. On January 25, 2019, WPG timely and properly filed its *Objection and Reservation of Rights of Washington Prime Group Inc. to the Proposed Cure Amounts in Connection with the Debtors’ Proposed Assumption and Assignment of Leases and Contracts* (Docket No. 1945) (the “WPG Cure Objection”). A copy of the WPG Cure Objection is attached hereto and incorporated herein as **Exhibit B**. The WPG Cure Objection asserted, among other things, that the aggregate Cure Amount for the WPG Leases associated with Store Nos. 1081, 2265, 1578, 1141, 1288, and 1154 (the “Potentially Assigned Leases”) was \$1,203,854.17 (the “WPG Cure Amount”).

13. In the WPG Cure Objection, WPG reserved its rights to, among other things:

...supplement and/or amend this Objection and to assert any additional objections with respect to the Cure Amount, adequate assurance of future performance, and/or any proposed assumption and assignment of the WPG Leases, including the Potentially Assigned Leases; (b) amend the Cure Amount; (c) assert any nonmonetary defaults under the WPG Leases; (d) assert any rights for indemnification or contribution against the Debtors arising under the WPG

Leases; and (e) assert any further objections with respect to the relief requested that may subsequently be sought by the Debtors and/or any other party, as such requested relief relates to the WPG Leases, including the Potentially Assigned WPG Leases, and/or the interests of WPG.

WPG Cure Objection, ¶ 21.

14. On February 8, 2019, this Court entered its *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith (and) (IV) Granting Related Relief* (Docket No. 2507) which, among other things, approved the Sale. Based on information and belief, the Sale closed on February 11, 2019.

15. On April 5, 2019, the Debtors filed the Supplemental Notice of Assumption and Assignment which schedules the Potentially Assigned Leases for assumption and assignment to Transform Operating Stores LLC. The Debtors propose: (i) \$0.00 as the aggregate amount necessary to cure the defaults under the WPG Lease associated with Store No. 1081; (ii) \$15,085.00 as the aggregate amount necessary to cure the defaults under the WPG Lease associated with Store No. 2265; (iii) \$0.00 as the aggregate amount necessary to cure the defaults under the WPG Lease associated with Store No. 1578; (iv) \$0.00 as the aggregate amount necessary to cure the defaults under the WPG Lease associated with Store No. 1141; (v) \$250.00 as the aggregate amount necessary to cure the defaults under the WPG Lease associated with Store No. 1288; and (vi) \$10,820.00 as the aggregate amount necessary to cure the defaults under the WPG Lease associated with Store No. 1154 (collectively, the “Proposed Cure Amounts”).

16. As provided in the Supplemental Notice of Assumption and Assignment, Supplemental Objections are due on or before May 3, 2019 at 11:30 a.m. (prevailing Eastern Time).

SUPPLEMENTAL OBJECTION

17. WPG fully restates and reincorporates the WPG Cure Objection, attached hereto as **Exhibit B**, as if fully re-written herein.

18. WPG objects to the Proposed Cure Amounts and hereby supplements the WPG Cure Amount to include additional outstanding amounts due and owing to WPG pursuant to the terms of the Potentially Assigned Leases that accrued after the filing of the WPG Cure Objection and must be remitted to WPG as part of the assumption and assignment of the Potentially Assigned Leases. As of the date of this Supplement, the WPG Cure Amount for the Potentially Assigned Leases is in the aggregate amount of \$1,090,495.12, as reflected on the chart below. Accounts receivable statements from WPG reflecting the WPG Cure Amount are attached hereto as **Exhibit C**.

Shopping Center	Store No.	City, State	Proposed Cure Amount	WPG Cure Amount
Indian Mound Mall	1081	Heath, Ohio	\$0.00	\$116,881.57
Mall at Johnson City	2265	Johnson City, Tennessee	\$15,085.00	\$19,734.02
Pearlridge	1578	Aiea, Hawaii	\$0.00	\$745,020.89
Town Center at Aurora	1141	Aurora, Colorado	\$0.00	\$0.00
Weberstown Mall	1288	Tampa, Florida	\$250.00	\$800.00
Whitehall Mall	1154	Whitehall, Pennsylvania	\$10,820.00	\$208,058.64
<i>WPG Cure Amount</i>				<i>\$1,090,495.12</i>

RESERVATION OF RIGHTS

19. Nothing in this Supplement is intended to be, or should be construed as, a waiver by WPG of any of its rights under the WPG Leases, including the Potentially Assigned Leases, the Bankruptcy Code, or applicable law. WPG expressly reserves all such rights including, without limitation, the right to: (a) supplement and/or amend this Supplement and to assert any additional objections with respect to the WPG Cure Amount and/or any proposed assumption and assignment of

the WPG Leases, including the Potentially Assigned Leases; (b) amend the WPG Cure Amount; (c) assert any nonmonetary defaults under the WPG Leases; (d) assert any rights for indemnification or contribution against the Debtors arising under the WPG Leases; and (e) assert any further objections with respect to the relief requested that may subsequently be sought by the Debtors and/or any other party, as such requested relief relates to the WPG Leases, including the Potentially Assigned Leases, and/or the interests of WPG.

20. WPG anticipates filing a substantive objection to the proposed assumption and assignment of the Potentially Assigned Leases and WPG reserves its rights accordingly.

CONCLUSION

WHEREFORE, WPG respectfully requests that this Court enter an order: (a) sustaining this Supplement; and (b) granting WPG such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: April 26, 2019

FROST BROWN TODD LLC

/s/ Ronald E. Gold

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2019, a copy of the foregoing was served electronically or via First Class Mail, postage prepaid upon all those identified on the Master Service List as of April 15, 2019 in accordance with: (i) this Court's *Amended Order Implementing Certain Notice and Case Management Procedures* entered November 1, 2018 (Docket No. 405); and (ii) the Supplemental Notice of Assumption and Assignment and the service requirements established thereby.

/s/ Ronald E. Gold

Ronald E. Gold

EXHIBIT A

“WPG Leases”

<i>Potentially Assigned WPG Leases</i>		
<i>Shopping Center</i>	<i>Store No.</i>	<i>City, State</i>
Boynton Beach Mall (including Auto Center)	1755, 6820	Boynton Beach, Florida
Indian Mound Mall	1081	Heath, Ohio
Mall at Johnson City	2265	Johnson City, Tennessee
Pearlridge	1578	Aiea, Hawaii
Port Charlotte Town Center	2145	Port Charlotte, Florida
Town Center at Aurora	1141	Aurora, Colorado
Weberstown Mall	1288	Stockton, California
Whitehall Mall	1154	Whitehall, Pennsylvania
<i>Seritage SRC Finance LLC-Associated Leases</i>		
<i>Shopping Center</i>	<i>Store No.</i>	<i>City, State</i>
Dayton Mall	1560	Dayton, Ohio
Great Lakes Mall	<i>Not Scheduled</i> ⁴	Mentor, Ohio
Lindale Mall	<i>Not Scheduled</i>	Cedar Rapids, Iowa
Maplewood Mall	<i>Not Scheduled</i>	St. Paul, Minnesota
University Town Plaza	<i>Not Scheduled</i>	Pensacola, Florida
Westminster Mall	<i>Not Scheduled</i>	Westminster, California
<i>Remaining WPG Leases</i>		
<i>Shopping Center</i>	<i>Store No.</i>	<i>City, State</i>
Anderson Mall	<i>Not Scheduled</i>	Anderson, South Carolina
Cottonwood Mall	<i>Not Scheduled</i>	Albuquerque, New Mexico
Northwoods Mall	<i>Not Scheduled</i>	Peoria, Illinois
Orange Park Mall	<i>Not Scheduled</i>	Orange Park, Florida
Rolling Oaks	<i>Not Scheduled</i>	San Antonio, Texas
Seminole Towne Center	<i>Not Scheduled</i>	Sanford, Florida
Sunland Park Mall	<i>Not Scheduled</i>	El Paso, Texas
West Ridge Mall	<i>Not Scheduled</i>	Topeka, Kansas

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⁴ “Not Scheduled” means not presently scheduled on the Original Assumption and Assignment Notices.